

AGING, DEPARTMENT ON[17]

Notice of Intended Action

Proposing rule making related to office of public guardian and providing an opportunity for public comment

The Department on Aging hereby proposes to amend Chapter 22, “Office of Substitute Decision Maker,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 17A.3 and 231.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 231E.

Purpose and Summary

This rule amendment implements the requirements in 2018 Iowa Acts, House File 2449, which made certain changes to Iowa Code chapter 231E, which governs the Office of Public Guardian. Significant changes include changing the name of the office from Office of Substitute Decision Maker to Office of Public Guardian and the removal of two categories of services—acting as attorney-in-fact under a Power of Attorney and acting as a personal representative in probate estates—from the list of services provided by the Office. These amendments make clarifying changes to conform eligibility criteria to those in the Iowa Code and to refer to the Center for Guardianship Certification instead of the National Guardianship Association certification.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 17—Chapter 11.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 6, 2019. Comments should be directed to:

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Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend **17—Chapter 22**, title, as follows:

OFFICE OF ~~SUBSTITUTE DECISION MAKER~~ PUBLIC GUARDIAN

ITEM 2. Amend rules 17—22.1(231E,633) to 17—22.8(231E,633) as follows:

17—22.1(231E,633) Purpose. This chapter implements the office of ~~substitute decision maker~~ public guardian as created in Iowa Code chapter 231E and establishes standards and procedures for those appointed as ~~substitute decision makers~~ public guardians. It also establishes the qualifications of consumers eligible for services.

17—22.2(231E,633) Definitions. Words and phrases used in this chapter are as defined in 17—Chapter 1 unless the context indicates otherwise. The following definitions also apply to this chapter:

~~“Active” means assuming the role of attorney in fact upon the triggering event specified in a power of attorney document.~~

“Assessment” means a comprehensive, in-depth evaluation to identify an individual’s current situation, ability to function, strengths, problems, and care needs in the following major functional areas: physical health, medical care utilization, activities of daily living, instrumental activities of daily living, mental and social functioning, financial resources, physical environment, and utilization of services and support.

“Case opening” means the internal administrative process used by the ~~state~~ local office in establishing a temporary or ongoing case, including, but not limited to: collecting and reviewing necessary financial, legal, medical or social history information pertaining to the consumer or the consumer’s estate; opening bank or other financial accounts on the consumer’s behalf; assigning ~~substitute decision makers~~ staff to perform ~~substitute decision making~~ public guardianship responsibilities for the consumer; collecting and receiving property of the consumer; creating files, summaries and other documents necessary for the management of the consumer or the consumer’s estate; and any other activities related to preparing for and assuming the responsibilities as a ~~substitute decision maker~~ public guardian.

“Consumer” as used in this chapter means any individual ~~in need of substitute decision making~~ receiving public guardianship services.

“Court” means the probate court having jurisdiction over the consumer.

“Department” means the department on aging established in Iowa Code section 231.21.

“Estate” means all property owned by the consumer including, but not limited to: all cash, liquid assets, furniture, motor vehicles, and any other tangible personal and real property.

“Fee” or *“fees”* means any costs assessed by the state office against a consumer ~~or a consumer’s estate~~ for substitute decision making public guardianship services, including monthly fees or a one-time case-opening fee for establishment of a case.

~~“Fiduciary” means the person or entity appointed as the consumer’s substitute decision maker and includes a person or entity acting as personal representative, guardian, conservator, representative payee, attorney in fact or trustee of any trust.~~

“Financial hardship” means a living consumer who has a total value in liquid assets below \$6,500; or the consumer’s estate proving otherwise inadequate to obtain or provide for physical or mental care or treatment, assistance, education, training, sustenance, housing, or other goods or services vital to the well-being of the consumer or the consumer’s dependents.

“Inventory” means a detailed list of the estate.

“Liquid assets” means the portion of a consumer’s estate comprised of cash, negotiable instruments, or other similar property that is readily convertible to cash and has a readily ascertainable fixed value, including but not limited to: savings accounts, checking accounts, certificates of deposit, money market accounts, corporate or municipal bonds, U.S. savings bonds, stocks or other negotiable securities, and mutual fund shares.

“Local office” means a local office of public guardian.

“Local public guardian” means an individual under contract with the department to act as a guardian, conservator, or representative payee.

“Net proceeds” means the value of the property at the time of sale minus taxes, commissions and other necessary expenses.

“Program” means the services offered by the office of ~~substitute decision maker~~ public guardian.

“Public guardian” means the state public guardian or a local public guardian.

“Record” means any information obtained by the state or local office in the performance of its duties.

“State office” means the state office of public guardian.

“State public guardian” means the administrator of the state office of public guardian.

~~“Substitute decision maker” or “SDM” means a person providing substitute decision-making services pursuant to Iowa Code chapter 231E.~~

17—22.3(231E,633) ~~Substitute decision maker~~ Public guardian qualifications. All SDMs public guardians shall have graduated from an accredited four-year college or university and shall be certified by the ~~National Guardianship Association~~ Center for Guardianship Certification within 12 months of assuming duties as ~~an SDM~~ a public guardian. This certification shall be kept current while the person is serving as ~~an SDM~~ a public guardian.

17—22.4(231E,633) Ethics and standards of practice. The state office adopts the National Guardianship Association Standards of Practice adopted in 2000, including any subsequent amendments thereto, as a statement of the best practices and the highest quality of practice for persons serving as guardians or conservators. The adoption of standards of practice in this document is not intended to amend or diminish the statutory scheme, but rather to supplement and enhance the understanding of the statutory obligations to be met by ~~the SDM~~ public guardians when serving as ~~an SDM~~ a public guardian. Subsequent to appointment to serve a consumer, the ~~SDM~~ public guardian shall perform all duties imposed by the court or other entity having jurisdiction and imposed by applicable law and, as appropriate, shall utilize standards found in the most current edition of the National Guardianship Association Standards of Practice.

17—22.5(231E,633) Staffing ratio. SDMs Local offices shall be responsible for no more than 40 consumers per full-time equivalent position at any one time. The state office shall notify the state court administrator when the maximum number of appointments is reached by a local office.

22.5(1) In its sole discretion, if the state office determines that due to the complexity of current cases ~~SDMs~~ a local office would have significant difficulty meeting the needs of consumers, the state office may choose to temporarily suspend acceptance of appointments. The state office shall notify the state court administrator of the suspension of services.

22.5(2) In the state office’s sole discretion, ~~the SDM~~ a local office may exceed staffing ratios under the following circumstances:

- a. A priority situation exists as defined in subrule 22.7(2), and
- b. Acceptance of case(s) will not adversely affect services to current consumers.

17—22.6(231E,633) Conflict of interest—state office. A conflict of interest arises when the SDM public guardian has any personal or agency interest that is or may be perceived as self-serving or adverse to the position or best interest of the consumer. When assigning a consumer to ~~an SDM~~ a public guardian, all reasonable efforts shall be made to avoid an actual conflict of interest or the appearance of a conflict of interest.

22.6(1) The assigned SDM public guardian shall not:

- a. Provide direct services to the consumer receiving ~~substitute decision-making public guardianship~~ services;
- b. Have an affiliation with or financial interest in the consumer's estate;
- c. Employ friends or family to provide services to the consumer for a fee; or
- d. Solicit or accept incentives from service providers.

22.6(2) The SDM public guardian shall be independent from all service providers, thus ensuring that the SDM public guardian remains free to challenge inappropriate or poorly delivered services and to advocate on behalf of the consumer.

17—22.7(231E,633) Consumers Individuals eligible for services. The state office shall seek to restrict appointments to only those necessary. The state office will not accept an appointment based upon a voluntary petition.

22.7(1) In order to qualify for services, the ~~consumer~~ individual shall meet all of the following criteria:

- a. Is a resident of the state of Iowa;
- b. Is aged 18 or older;
- c. Does not have a ~~willing and responsible fiduciary to serve as an SDM~~ suitable individual or appropriate entity willing and able to serve as guardian or conservator;
- d. ~~Is capable of benefiting from the services of an SDM incompetent; and~~
- e. ~~Receipt of SDM services is in the best interest of the consumer; and~~ Is an individual for whom guardianship or conservatorship services are the least restrictive means of meeting the individual's needs.
- f. ~~No alternative SDM resources are available.~~

22.7(2) The following cases shall be given priority:

- a. Those involving abuse, neglect or exploitation;
- b. Those in which a critical medical decision must be made; or
- c. Any situation which may cause serious or irreparable harm to the ~~consumer's~~ consumer's mental or physical health or estate.

17—22.8(231E,633) Application and intake process—guardianship, conservatorship, and representative payee and personal representative.

22.8(1) Any person may ~~request~~ submit an application for services on behalf of an individual believed to be in need of public guardianship services. Applications are available through the state office. Completed applications shall be submitted to the Office of ~~Substitute Decision Maker Public Guardian~~, Jessie M. Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025. Incomplete applications will not be considered. Communication with the state office or local office or the submission of an application does not imply an appointment and does not create any type of fiduciary relationship between the state office and the ~~consumer~~ individual on whose behalf the application is submitted.

22.8(2) The state office shall make a determination regarding eligibility of the ~~consumer~~ individual and acceptance or denial of the case based on a review of the completed application.

22.8(3) The state office shall grant or deny an application for services as soon as practicable, but, in any event, shall do so within 60 days of receipt of the application.

22.8(4) Failure of the state office to grant or deny an application within the specified time period shall be deemed a denial of the application by the state office.

ITEM 3. Rescind rule **17—22.9(231E,633)**.

ITEM 4. Renumber rules **17—22.10(231E,633)** to **17—22.16(231E,633)** as **17—22.9(231E,633)** to **17—22.15(231E,633)**.

ITEM 5. Amend renumbered rules 17—22.9(231E,633) to 17—22.13(231E,633) as follows:

17—22.9(231E,633) Case records.

22.9(1) A case record must be established for each consumer. At a minimum, the case record must contain:

- a. Copies of the assessments, medical records, and updates, if any;
- b. A separate financial management folder containing an inventory, an individual financial management plan, a record of all financial transactions made on behalf of the consumer by the SDM public guardian, copies of receipts for all expenditures made by the SDM public guardian on behalf of the consumer, and copies of all other documents pertaining to the ~~consumer's~~ consumer's financial situation as required by the state office;
- c. Itemized statements of costs incurred in the provision of services for which the SDM public guardian received court-authorized reimbursement directly from the ~~consumer's~~ consumer's estate; and
- d. Other information as required by the state office.

22.9(2) All case records maintained by the SDM public guardian shall be confidential as provided in Iowa Code section 231E.4(6)“g.”

17—22.10(231E,633) Confidentiality. Notwithstanding Iowa Code chapter 22, the following provisions shall apply to records obtained by SDMs public guardians in the course of their duties.

22.10(1) Records or information obtained for use by ~~an SDM~~ a public guardian is confidential. All records or information obtained from federal, state or local agencies and health or mental care service providers shall be managed by the state ~~office~~ and local offices with the same degree of confidentiality required by law or the policy utilized by the entity having control of such records or information. Such records or information shall not be disseminated without written permission from the entity having control of such records or information.

22.10(2) In its sole discretion, the state or local office may disclose a record obtained in the performance of its duties if release of the record is necessary and in the best interest of the consumer. Disclosure of a record under this rule does not affect the confidential nature of the record.

22.10(3) Information may be redacted so that personally identifiable information is kept confidential.

22.10(4) Confidential information may be disclosed to employees and agents of the department as needed for the performance of their duties. The state office shall determine what constitutes legitimate need to use confidential records. Individuals affected by this rule may include paid staff and volunteers working under the direction of the department and commission members.

22.10(5) Information concerning program expenditures and client eligibility may be released to staff of the state executive and legislative branches who are responsible for ensuring that public funds have been managed correctly. This same information may also be released to auditors from federal agencies when those agencies provide program funds.

22.10(6) The state office or a local office may enter into contracts or agreements with public or private entities in order to carry out the state or local office's official duties. Information necessary to carry out these duties may be shared with these entities. The state or local office may disclose protected health information to an entity under contract and may allow an entity to create or receive protected health information on the state or local office's behalf if the state or local office obtains satisfactory assurance that the entity will appropriately safeguard the information.

22.10(7) Release for judicial and administrative proceedings.

- a. Information shall be released to the court as required by law.

b. The state or local office shall disclose protected health information in the course of any judicial or administrative proceeding in response to an order of a court or administrative tribunal. The state or local office shall disclose only the protected health information expressly authorized by the order and when the court makes the order knowing that the information is confidential.

c. If a court subpoenas other information that the state or local office is prohibited from releasing, the state or local office shall advise the court of the statutory and regulatory provisions against disclosure of the information and shall disclose the information only on order of the court.

22.10(8) Information concerning suspected fraud or misrepresentation in order to obtain ~~SDM~~ public guardianship services or assistance may be disclosed to law enforcement authorities.

22.10(9) Information concerning consumers may be shared with service providers under contract.

a. Information concerning the consumer's circumstances and need for services may be shared with prospective service providers to obtain placement for the consumer. If the consumer is not accepted for service, all written information released to the service provider shall be returned to the state or local office.

b. When the information needed by the service provider is mental health information or substance abuse information, the consumer's specific consent is required.

22.10(10) After the state or local office receives a request for access to a confidential record, and before the state or local office releases such a record, the state or local office may make reasonable efforts to promptly notify any person who is a subject of that record, who is identified in that record, or whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

17—22.11(231E,633) Termination or limitation. Either ~~an SDM~~ a local office or the state office may seek the termination or limitation of ~~an SDM's a local office's~~ duties under circumstances including but not limited to the following:

1. ~~The SDM's Public guardianship~~ services are no longer needed or do not benefit the consumer;
2. The consumer's assets allow for hiring a paid ~~substitute decision maker~~ guardianship or conservatorship service provider;
3. A conflict of interest or the appearance of a conflict of interest arises;
4. The state or local office lacks adequate staff or financial resources;
5. The consumer moves outside the state or outside the local office's service area;
6. The state office is no longer the last resort for assistance;
7. The ~~SDM~~ local office withdraws from the service agreement;
8. Termination of the program by law; or
9. Other circumstances which indicate a need for termination or limitation.

17—22.12(231E,633) Service fees.

22.12(1) The state ~~SDM~~ public guardian and local ~~SDM~~ public guardian shall be entitled to reasonable compensation for their ~~substitute decision-making~~ public guardianship services as determined by using the following criteria:

- a. Such compensation shall not exceed actual costs.
- b. Fees may be adjusted or waived based upon the ability of the consumer to pay, upon whether financial hardship to the consumer would result, or upon a finding that collection of such fees is not economically feasible.
- c. Fees shall be as established in rule ~~17—22.14(231E,633)~~ 17—22.13(231E,633). The state office may collect a fee from the estate of a deceased consumer.

22.12(2) Fees shall not be assessed on income or support derived from Medicaid. Income or support derived from Social Security and other federal benefits shall be subject to assessment unless the funds

have been expressly designated for another purpose. Written notice shall be given to the consumer prior to the collection of fees. The written notice shall describe the type and amount of fees assessed.

22.12(3) Case-opening fees. All consumers, except those receiving representative payee services, with liquid assets valued at \$6,500 or more on the date of the ~~SDM's~~ public guardian's appointment shall be assessed a one-time case-opening fee for establishment of the case by the ~~state~~ local office. Case-opening fees shall be assessed for each appointment, including a reappointment more than six months after the termination of a prior appointment as ~~SDM~~ public guardian for the same consumer which involves similar powers and duties.

22.12(4) Monthly fees.

a. A monthly fee for ~~SDM~~ public guardianship services other than the sale or management of real or personal property shall be assessed against all consumers with liquid assets valued at \$6,500 or more on any one day during the month. Monthly fees shall be collected by the state office on a pro rata basis on the first of each month. A monthly fee shall be assessed when ~~an SDM~~ a public guardian is appointed to guardianship, conservatorship, or representative payee duties.

b. ~~Under a power of attorney, monthly fees shall be assessed once the state office assumes an active role as attorney-in-fact. The state office shall evaluate a consumer's estate annually or as necessary to determine the need for an increase or decrease in the monthly fee.~~

c. *b.* In all cases where the state office serves as representative payee under programs administered by the Social Security Administration, Railroad Retirement Board, or similar programs, the monthly fee for providing representative payee services shall be as established by the federal governmental agency which appoints the representative payee.

22.12(5) Additional fees.

a. Fees for the sale of a consumer's real or personal property shall be in addition to case-opening and monthly service fees.

b. Fees for the sale of real or personal property shall be 10 percent of the net proceeds resulting from the sale of the property and shall be paid at the time the sale is completed.

c. Such further allowances as are just and reasonable may be made by the court to ~~SDMs~~ public guardians for actual, necessary and extraordinary expenses and services.

22.12(6) Preparation and filing of state or federal income tax returns. Fees for the preparation and filing of a consumer's state or federal income tax return may be assessed at the time of filing of a return for each tax year in which a return is filed.

22.12(7) Settlement of a personal injury cause of action. Fees for the settlement of a consumer's personal injury cause of action may be collected upon court approval of the settlement.

22.12(8) Establishment of a recognized trust. Fees for establishing a recognized trust for the purpose of conserving or protecting a consumer's estate and for petitioning the court for the approval of the trust may be collected at the time of court approval of establishment of the trust.

22.12(9) Extraordinary expenses and services. The state office may collect fees pursuant to court order for other actual, necessary and extraordinary expenses or services. Necessary and extraordinary services shall be construed to also include services in connection with real estate, tax matters, and litigated matters.

22.12(10) Impact on creditors. The state office may collect fees even when claims of creditors of the consumer may be compromised.

17—22.13(231E,633) Fee schedule. The following fees are applicable to services provided by ~~an SDM~~ a public guardian unless reduced or waived pursuant to paragraph ~~22.13(1) "b."~~ 22.12(1) "b."

Action or Responsibility	Fee
One-time case opening:	
Guardianship	\$200
Conservatorship	\$300
Guardianship and conservatorship	\$500
Durable power of attorney for health care	\$ 60
Durable power of attorney for financial matters	\$100
Power of attorney for health care and financial matters	\$160
Monthly SDM public guardianship services for conservator, durable power of attorney for health care and general power of attorney for financial matters <u>except</u> representative payee.	
Total value of liquid assets:	
\$ 6,500 – \$ 9,999	\$100
\$10,000 – \$19,999	\$125
\$20,000 – \$29,999	\$150
\$30,000 – \$39,999	\$175
\$40,000 – \$49,999	\$200
\$50,000 – \$59,999	\$225
\$60,000 – \$69,999	\$250
\$70,000 – \$79,999	\$275
\$80,000 – \$89,999	\$300
\$90,000 – \$99,999	\$325
\$100,000 or above	\$350
Personal representative	As determined by Iowa Code section 633.197
Preparation and filing of income tax returns:	
Each federal return	\$ 50
Each state return	\$ 25
Settlement of a personal injury cause of action:	
Each cause of action approved by the probate court	\$250
Establishment of a recognized trust for the consumer's financial estate:	
Each trust	\$250
Representative payee—monthly fee	As determined by the federal governmental agency that appoints the representative payee

ITEM 6. Rescind rule 17—22.17(231E,633).

ITEM 7. Renumber rule 17—22.18(231E,633) as 17—22.16(231E,633).